



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,655	09/23/2003	Nyle S. Elliott	A-8601	9116

7590 07/09/2008  
HOFFMAN, WASSON & GITLER, P.C.  
Suite 522  
2361 Jefferson Davis Highway  
Arlington, VA 22202

EXAMINER
----------

MARCETICH, ADAM M

ART UNIT	PAPER NUMBER
----------	--------------

3761

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

07/09/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/667,655

**Applicant(s)**

ELLIOTT, NYLE S.

**Examiner**

Adam Marcetich

**Art Unit**

3761

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 05 June 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Tatyana Zalukaeva/  
Supervisory Patent Examiner, Art Unit 3761

/Adam Marcetich/  
Examiner, Art Unit 3761

Continuation of 11, does NOT place the application in condition for allowance because: Response to arguments

Applicant's arguments 05 June 2008 have been fully considered but they are not persuasive.

Applicant asserts that there is no need to detect wetness within a lumen inserted within a stoma, since the device of Johnson is used to detect moisture or wetness of a diaper. Examiner notes that motivation also exists to detect the presence of fecal matter for individuals who lack the ability to respond to bowel movements. For example, Nemir et al. (US 6,843,766) discloses a need for treating fecal incontinence with a sensor (col. 1, lines 27-36). The invention of Johnson solves a similar problem of infant training (cols. 3-4, lines 64-9). Both of these applications involve providing feedback when presence of waste material is detected.

Applicant asserts that Fig. 7 of Johnson cannot be relied upon for disclosing the actual physical relationship, such as orientation, between the parts of Johnson's device, since such a figure is a schematic drawing of the circuitry and has no bearing on the actual physical relationship between the parts making up the device. Examiner notes that Brown (US 5,036,859) discloses embodiments of a sensor element having different shapes, wherein the conductive elements are arranged to fit different physical layouts surface structures (Figs. 6 and 7, pads 11 having rounded or triangular shapes). In a second example, Millot et al. (US 6,171,289) discloses sensor electrodes arranged circumferentially to engage a base having a circular shape (Fig. 2, tracks 15 and 16).

It is the Examiner's position that matching conductor geometry to a surface does not provide patentability since the shape of a base surface places constraints on how conductors can be arranged effectively. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to arrange the conductors of Johnson as required to fit a cylindrical geometry as discussed.

Applicant has amended claim 10 in response to a rejection over 35 USC 112, to define an absorbent sleeve surrounding a plug. Examiner notes that this amendment does not provide patentability, as shown by Jensen (US 4,451,258) and Alexander (US 4,419,100).

Jensen discloses a filtered ostomy appliance (col. 1, lines 6-11, 14-26) further comprising a plug (col. 3, lines 11-28, 44-55 and Fig. 2, rings 44 of lid 24); and an absorbent sleeve surrounding the plug (col. 3, lines 11-28, 44-55 and Fig. 2, filter 28 substantially surrounding rings 44 as depicted). Jensen provides the advantage of filtering gases (col. 3, lines 44-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of VonDyck in view of Johnson as discussed with the absorbent sleeve as taught by Jensen in order to filter gases.

Alexander discloses an ostomy appliance (col. 3, lines 31-33; Figs. 1, 2, ostomy appliance 10) further comprising a plug (col. 4, lines 51-56 and Figs. 1, 2, first and second coupling rings 16 and 37); and an absorbent sleeve surrounding the plug (cols. 3-4, lines 66-15, especially lines 8-9, faceplate 30 comprising porous expanded film and surrounding rings 16 and 37 as depicted). Jensen provides the advantage of allowing gases to pass, and prevent pressure buildup. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of VonDyck in view of Johnson as discussed with the absorbent sleeve as taught by Alexander in order to prevent gas buildup.